IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2155 of 2004
Date of Decision:28.8.2007

M/s Saini Rice and General Mills and others ...Appellants

Versus

Bakhtawar Singh ...Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Rajnish Narula, Advocate, for the appellants.

Shri J.S. Chaudhary, Senior Advocate, with
Shri D.S. Chanan, Advocate, for the respondent.

HEMANT GUPTA, J.

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for recovery of Rs.2,88,114.70p was decreed on account of the price of the goods supplied.

In order to prove that the goods were supplied to the defendants, the plaintiff examined amongst other PW2-Ashwani Kumar, Mandi Supervisor of the Market Committee, who has brought the register containing the entries of the sale and purchase of the foodgrains within the area of the Market Committee. On the basis of such evidence produced by the plaintiff, the Courts below have found that the plaintiff is entitled to recover the amount claimed.

In para No. 19 of the judgment of the learned first Appellate Court, it has been found that the purchase made on 22.10.1997 is the only purchase denied by the defendants but on the basis of

bill Exhibit P.10 and the records of the Market Committee Exhibits PW2/G and PW2/H, the purchase by the defendants is proved. The stand of the defendants that the amount has been paid to the plaintiff vide receipts Exhibits D.1 to D.6 has been considered and negated. It has been found that the plaintiff has moved an application directing the defendants to prove on record ledger, cash books etc. to show the said payment in their record. The defendants failed to produce these documents on record. Thus, it was held that the stand of the defendant is not believable when the documents in their possession have not been produced.

Learned counsel for the appellants has vehemently argued that the receipts Exhibits D.1 to D.6 are proved to be bearing the signatures of one of the partners of the plaintiff, namely, Man Singh, from the testimony of expert DW1- Devinder Parsad. Therefore, the Court could not raise any adverse inference on account of non production of the record.

It has rightly been found by the Courts below that the science of the hand writing is not a perfect science. The Courts have drawn adverse inference against the defendants for not producing the record of the defendants such as ledger, cash books etc. to show that the payment in respect of which receipts Exhibits D.1 to D.6 finds mention in the record of the defendants. From the evidence of the plaintiff, supply of goods is proved whereas the payments alleged have not been proved.

Learned counsel for the appellants has vehemently contended that the Courts below have granted interest prior to the filing of the suit @ 18% p.a. It is contended that there is no evidence on record to grant such rate of interest in commercial transactions at the relevant time. Therefore, the interest awarded is excessive. It is further contended that the

plaintiff has claimed the interest @ 12% p.a. and, therefore, interest exceeding 12% p.a. could not have been awarded by the Courts below.

Shri Chaudhary, learned Senior Counsel, representing the respondent states that he has no objection if the rate of interest i.e. the interest claimed prior to the filing of the suit, awarded by the Courts below is reduced to 12% p.a.

In view of the above, the judgment and decree passed by the Courts below is modified to the extent of grant of interest. It is directed that the suit shall stand decreed for an amount of 2,11,789.49p (i.e. principal amount of Rs.1,36,781.81p and Rs.75007.68p as interest @ 12% p.a. The plaintiff shall also be entitled to the future interest @ 12% from the date of filing of the suit till realization on the principal amount.

Except the above modification in the judgment and decree passed by the Courts below regarding the rate of interest, I do not find any patent illegality or irregularity in the findings recorded by the Courts below, which may give rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed, but with modification as indicated above.

28-08-2007 (HEMANT GUPTA)
ds JUDGE